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Pima Mining Company

SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

FARMERS INVESTMENT COMPANY,
a corporation,

Plaintiff,

v.

THE ANACONDA COMPANY, a
corporation; et al.,

Defendants and
Cross-Defendants.

NO. 115542

PIMA'S REPLY TO

FICO'S RESPONSE TO

PIMA'S SUMMARY

JUDGMENT MOTION

ANDREW L. BUTLER, as
State Land Commissioner
and THE STATE LAND
DEPARTMENT, a department
of the State of Arizona,

Defendants and
Cross-Claimants.

It has been difficult to ascertain upon what FICO has based its Summary Judgment Motion. Now that FICO apparently has ascertained it, FICO chides us for having attacked "straw" arguments earlier. FICO now claims that its motion is based upon the fact that "a commercial lease [is being] used to transfer title to a natural product of such land" [Response, page 2].

Inasmuch as FICO "stoutly" denied previously that water was "a natural product of such land," perhaps we may be forgiven

1 for not having attacked previously FICO's present claim, since it
2 was not made previously and could not possibly have been made
3 previously in view of the injudicious but nonetheless judicial
4 admission made in Mr. Wilmer's sworn papers served on June 15,
5 1973.

6 FICO now says that its motion was based upon the ground
7 that the State Land Department for years has been engaging in an
8 illegal practice, namely, leasing land for water development pur-
9 poses to industry and municipalities pursuant to commercial
10 leases [ARS 37-281(A)] instead of pursuant to mineral leases
11 [ARS 27-271] or pursuant to common mineral product leases [ARS
12 27-234 et seq.]. Plaintiff has not been kind enough to tell us
13 which one of the latter two type leases is applicable to leases
14 for water development purposes, and we challenge FICO to tell us
15 how the specific statutory provisions of either of the latter two
16 leasing statutes could be applied to water development.

17
18 In any event, at least the broad general outlines of
19 FICO's newly found position have become delineated. This posi-
20 tion is most readily rebutted by ARS 37-212(B)(1-4) quoted by FICO
21 at page 7 of its original memorandum. As there made clear, state
22 lands are classified in five groups, i.e., those suitable for:

- 23
24 1. agriculture;
25 2. grazing;
26 3. commerce or homesites;
27 4. valuable products, or
28 5. "Lands which may become agricultural lands by
29 expenditure of a reasonable amount for the develop-
30 ment of water thereon."

31
32 Obviously, then, water cannot be a "valuable" product.

1 of the land. If it were, there could be no category (5) because
2 the existence of water thereon automatically would turn the land
3 into category (3), namely, "Lands containing timber, stone or
4 other products which may become valuable."
5

6 Thus, the State Land Department has known what it has
7 been doing these many years. It has leased lands to mines and
8 cities for the purpose of extracting water and using it in indus-
9 try and commerce or for commercial sale by municipalities.
10

11 Indeed, if water development leases had to be in the
12 form of mineral or common mineral product leases, then all agri-
13 cultural leases in the State perforce also must be voided. The
14 reason for this is that all agricultural leases allow development
15 of water therefrom.
16

17 Moreover, since FICO is a holder of agricultural leases
18 and user of water therefrom, it comes into court with unclean
19 (albeit well washed) hands.
20

21 However, the main point is that water development never
22 has been considered in this State a sale of a natural product,
23 and undoubtedly for good and sufficient reasons. Thus, upon the
24 rationale expressed in State Land Department v. Tucson Rock and
25 Sand Co., 107 Ariz. 74, 481 P. 2d 867 (1971), this Court should
26 construe the various leasing statutes harmoniously so as to uphold
27 the validity of ARS 37-212. That section, properly construed,
28 plainly treats valuable product land quite differently from agri-
29 cultural (and possibly agricultural) land from which water may be
30 developed. That being so, water under land is not and cannot
31 logically be considered a valuable product within the meaning of
32 the statute.

1 Consequently, FICO's motion must be denied and Pima's
2 motion must be granted.

3
4 Respectfully submitted,

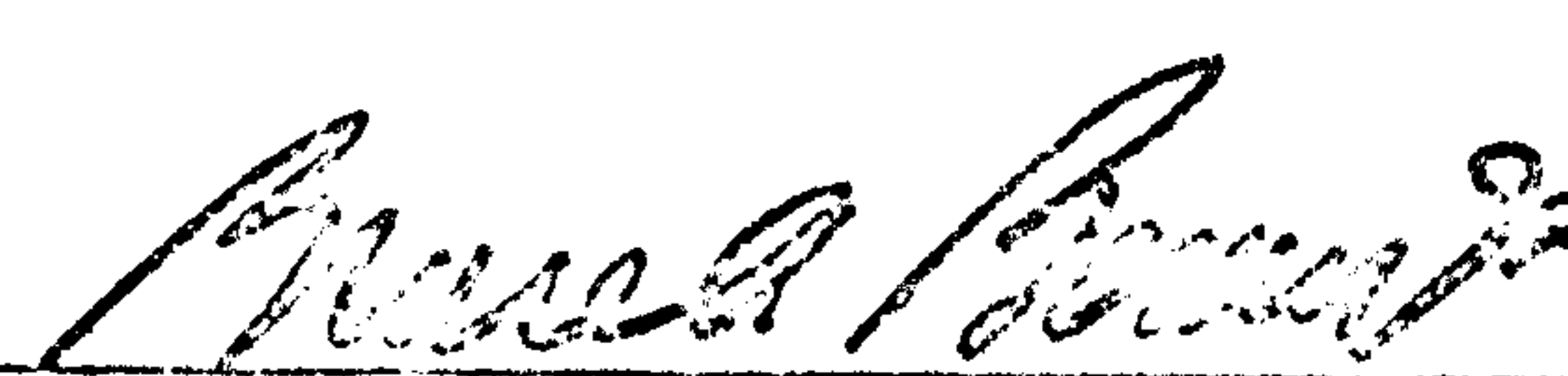
5 VERITY & SMITH
6 and
7 MUSICK, PEELER & GARRETT

8 By: 

9 Bruce A. Bevan, Jr.

10 Attorneys for Defendant
11 Pima Mining Company

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13
14
15 A copy of the foregoing PIMA'S REPLY TO FICO'S RESPONSE
16 TO PIMA'S SUMMARY JUDGMENT MOTION was served by mail this 6th day
17 of September, 1973 upon all counsel of record and Judge Royiston.

18
19 
20 Bruce A. Bevan, Jr.

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

ss:

I Craig Swick hereby certify:
Name

That I am Reference Librarian, Law & Research Library Division of the Arizona State
Title/Division

Library, Archives and Public Records of the State of Arizona;

That there is on file in said Agency the following:
Microfilm of Farmer's Investment Company v. Pima Mining Company et al, Arizona Supreme Court Case No. 11439, Pima's Reply to FICO's Response to Pima's Summary Judgment Motion, from Farmer's Investment Company v. Anaconda Company, et al, Superior Court of the State of Arizona in and for the County of Pima, case no. 116542, September 6, 1973. pages 101-104.

The reproduction(s) to which this affidavit is attached is/are a true and correct copy of the document(s) on file.

Craig D. Swick
Signature

Subscribed and sworn to before me this 12/12/2008
Date

Etta Louise Muir
Signature, Notary Public

My commission expires 04/13/2009.
Date

